IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12186 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH K SHAH

Versus

ADDL DIRECTOR OF INCOME TAX (INVESTIGATION)

Appearance:
MR KA PUJ for Petitioner
MR AKIL KURESHI with MR MANISH R BHATT for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 14/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. M/s M.R. Bhatt & Co. waive service of

notice of Rule on behalf of the respondents.

2. Search and seizure operations were carried out at the petitioner's premises on 21.1.1999. The books of accounts and other documents were seized. Similarly, search and seizure were carried out on 22.1.1999 in respect of the petitioner's bank locker. On the basis of the aforesaid search operations, summons was issued to the petitioner under Section 131(1A) of the Act and proceedings for block assessment were also initiated under Chapter XIV B of the Act. This petition was filed in May, 2000 for the following three prayers :-

(i) for quashing and setting aside the authorization issued by the respondents under Section 131(1) of the Act and the summons issued under Section 131(1A) of the Act.

(ii) for quashing and setting aside the notice issued under Section 158 BC of the Act on 8.3.1999.

(iii) for directing the respondents to release the seized materials including the books of accounts, documents etc. as the period of 180 days was over from the date of seizure.

3. In response to the notice, affidavit in reply has been filed by Mr Paramjeet Singh, Deputy Director of Income-tax (Inv.), Bhavnagar justifying the search and seizure operations on the basis of the authorization issued under Section 132 of the Act and also the summons issued under Section 131(1A) of the Act as well as initiation of block period proceedings under Chapter XIV B of the Act.

It is, however, not necessary to go into details all the contentions raised and the submissions made in the respective pleadings in respect of the first two prayers as the learned counsel for the petitioner states that the petitioner does not press challenges to the authorization issued under Section 132(1) of the Act, the issuance of summons under Section 131(1A) of the Act and initiation of block proceedings under Chapter XIV B of the Act. The learned counsel for the petitioner has confined his submissions to prayer (iii) for directing the respondent to release the books of accounts and documents seized during the search operations. The learned counsel for the petitioner places reliance on the

decision dated 21.11.2000 of this Court in Special Civil Application No. 2047 of 2000.

4. Mr Akil Kureshi, learned counsel for the revenue is not in a position to justify the retention of the documents for a period of two years. The long period of two years assumes significance in view of the statement being made by Mr Puj for the petitioner that in the intervening period, the petitioner's block assessment is also made under Chapter XIV of the Act and the respondents could not have any possible reason for retaining the documents. Mr Kureshi for the department, however, submits that in case the books of accounts and documents belonging to the petitioner have any bearing on any other case or if any proceedings are required to be initiated under Section 158 BD of the Act against any other person, the seized material may be relevant in such proceedings.

5. Having heard the learned counsel for the parties, we are of the view that interests of justice would be served if the respondents are directed to return the books of accounts and other documents seized during the search operations at the petitioner's premises subject to certain conditions so as to protect the interest of the revenue.

6. It is accordingly directed that the books of accounts and other documents belonging to the petitioner seized during the search operations at the petitioner's premises shall be returned to the petitioner subject to the condition that the petitioner shall produce the original books of accounts for perusal of the department as and when required and that it would be open to the department to retain copies of the books of accounts and other documents and to rely on those copies as and when required. The copies so prepared by the department shall be initialled by the parties to ensure their authenticity.

7. The petition is accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent only with no order as to costs.

8. At the request of Mr Puj for the petitioner, we

clarify that this order shall not come in the way of the petitioner raising contentions available to the petitioner under law in the proceedings for challenging the assessment under Chapter XIV B of the Act.

Sd/-
(J.M. Panchal, J.)
Sd/-
(M.S. Shah, J.)

sundar/-